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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,180	05/14/2001	Lavada Campbell Boggs	KCC-14,485	8191

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/11/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/855,180

Applicant(s)

BOGGS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2002 & 1-21-03
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-58 is/are pending in the application.
- 4a) Of the above claim(s) 7,9-11,13,14,20-24 and 28-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,12,15-19 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 23 October 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Election/Restriction

1. Claims 7, 9-11, 13-14, 20-24 and 28-58 remain with drawn from further consideration. Claims 4-5 will be considered but not because they were improperly withdrawn, i.e. these claims do not read on Figure 7 because it is not clear that the average filament size of the first and second filaments are different nor that there are different filament densities since the Figure does not only show all the second filaments the same nor the same number of each type of filament, but because the prior art applied below shows that such does not patentably distinguish the previously acted on claims therefrom and there was no further serious burden on the Examiner to consider such.

Information Disclosure Statement

2. The IDS was considered, as a courtesy, not because the certification included the statement set forth in 37 CFR 1.97(e) because such did not state "first cited in any communication from a foreign patent office" (emphasis added). Applicant's statement was not the same, i.e. only stated were first cited in a written opinion for a particular case.

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Drawings

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 10-23-02 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-5, 12, 15-19 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by 3M, PCT '264.

See Figures, esp. Figures 5, 8 and 14, page 4, line 15-page 5, line 3, page 7, lines 6-23, page 11, lines 19-31, page 16, lines 24 et seq, page 17, lines 1-7, page 21, line 22-page 24, line 14, and page 27, lines 24-26 of 3M, i.e. the high tension/low stretch zone are adjacent edge 74 while the low tension/high stretch zone is in the midportion as seen in Figure 4, the first facing layer is 76. As best understood of the instant specification at page 2, last paragraph, page 3, lines 8-14 as amended, the definitions on page 7, lines 9-17, and the manufacturing processes of Figures 9-12 and 16, the device as set forth by 3M is made in a single manufacturing process.

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With regard to the limitation added to claims 1 and 25, Applicant claims a barrier layer between at least two of the first filaments. It is noted that the claims do not require that the barrier layer only be between the first filaments or that the filaments are on opposite sides of the layer. Therefore since 3M shows a barrier layer 72 extending between at least two of the first filaments which are adjacent each other such meets the claim language. The reference teaches a device which functions as set forth in claims 12, 15-16 and 19, see page 1, lines 8-9 of 3M. In claims 17-18, Applicant claims the device being swimwear or a feminine hygiene article which capability or function the reference does not explicitly teach. However, the 3M patent teaches all the claimed structure. Therefore there is sufficient factual evidence for one to conclude that the properties and functions of such claimed structure would also be inherent in the same structure of the 3M device. See MPEP 2112.01.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to

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the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 6 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over 3M '264 in view of Kimberly Clark EP '550.

Applicant claims a second facing layer bonded to a second side of the zones, i.e. the first facing layer is attached to a first side of the zones. See Figure 14, element 72, page 23, lines 14-19 and page 6, lines 7 et seq of 3M, i.e the zones have a barrier or backsheet on one side and a facing layer on the other . See KC '550 at page 4, lines 40-55, i.e. interchangeability of a two ply barrier for a one ply barrier. To make the one ply film barrier of 3M a two ply, inner film ply/outer ply nonwoven web barrier instead would be obvious to one of ordinary skill in the art in view of the recognition of the interchangeability as taught by KC '550. In so doing the outer play would be a second facing layer on the second side of the zones.

Response to Amendment

8. Applicant's remarks in the 10-23-02 and 1-21-03 responses with regard to the informalities, withdrawn claims and disclosure statement have been considered but either are deemed moot in that such issues have not been reraised or have been addressed supra. The

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remarks with regard to the prior art have been considered but are either deemed moot, i.e with regard to Pieniak, in that such rejection has not been reraised, or is deemed nonpersuasive, i.e with regard to 3M, in that arguments are narrower than the claim language and the teachings of 3M. Applicant appears to be reading limitations into the claims that are not there, i.e the filaments are on opposite surfaces. See remarks with regard to cited prior art infra.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. It is noted that the St. Louis '215 reference also teaches a material having a barrier layer and that elastic members can be all on one side, all on the other side or on alternate sides. The Bunnelle et al reference teaches that elastic can be extruded onto a substrate in a single manufacturing process or extruded and stored. The remainder of the references teach various laminates having zones.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the addition of the limitations of claim 8, which depended from claim 2 and from which no other claim depended, to claim 1 and claim 25, and the changes to claims 2 and 26 and the dependence change to claims 4-5.

11. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

KMR

July 3, 2003

K-M. Reichle
K-M. REICHEL
PATENT EXAMINER